

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3364

BY DELEGATE STORCH

(BY REQUEST OF THE MUNICIPAL PENSIONS OVERSIGHT
BOARD)

[Passed March 3, 2023; in effect from passage.]

1 AN ACT to amend and reenact §8-33-4a of the Code of West Virginia, 1931, as amended, relating
2 to the issuance of pension funding revenue bonds; and requiring the closure of certain
3 municipal policemen's and firemen's pension and relief funds as condition of issuance of
4 pension funding revenue bonds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. INTERGOVERNMENTAL RELATIONS — BUILDING COMMISSIONS.

§8-33-4a. Issuance of pension funding revenue bonds to fund a pension funding program.

1 (a) In addition to the powers set forth in §8-33-4 of this code and subject to the
2 requirements set forth in this section and in §8-33-4b of this code, a commission formed by a
3 Class I, Class II or Class III municipality may issue pension funding revenue bonds to raise funds
4 for the funding of a pension funding program in the manner provided by this section. A "pension
5 funding program" means a program established by a municipality for reducing the unfunded
6 actuarial accrued liability of a policemen's or firemen's pension and relief fund of the municipality
7 with the proceeds of pension funding revenue bonds issued pursuant to this section.

8 (b) Before any commission shall fund any pension funding program through the issuance
9 of pension funding revenue bonds, the commission shall enact an ordinance or ordinances, which
10 shall (1) set forth a brief and general description of the pension funding program; (2) set forth the
11 estimated cost thereof; (3) order the funding of the pension funding program; (4) direct that
12 pension funding revenue bonds be issued pursuant to this section, in such amount as may be
13 found necessary to pay the cost of the pension funding program; (5) contain such provisions as
14 the commission determines are necessary or desirable with regard to the establishment and
15 setting aside of a debt service reserve fund if deemed beneficial to the commission and for the
16 administration and disposition of the debt service reserve fund; (6) contain provisions establishing
17 and setting aside a debt service contingency reserve fund with the municipality in an amount at
18 least equal to 10 percent of the original principal amount of the pension funding revenue bonds
19 from cash contributed by the municipality or from the proceeds of the pension funding revenue

20 bonds, providing for the replenishment of any amounts drawn from the debt service contingency
21 reserve fund in a reasonable time period, and for the administration and disposition of the debt
22 service contingency reserve fund; and (7) contain such other provisions as may be necessary or
23 proper in the premises. Before any such ordinance shall become effective, an abstract of the
24 ordinance, determined by the commission to contain sufficient information as to give notice of the
25 contents of such ordinance, together with the following described notice, shall be published as a
26 Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and
27 the publication area for such publication shall be the municipality which formed the commission.
28 The notice to be published with the abstract of the ordinance shall specify a date, time and place
29 for a public hearing, the date being not less than 10 days after the first publication of the abstract
30 and notice and not prior to the last publication of the abstract and notice, at which time and place
31 all parties and interests may appear before the commission and may be heard as to whether or
32 not said ordinance shall be put into effect, and said notice shall also identify the office in which a
33 certified copy of such ordinance shall be on file for review by interested persons during the office
34 hours of the office. At the public hearing all objections and suggestions shall be heard, and the
35 commission shall take such action as it deems proper in the premises.

36 (c) (1) The cost of a pension funding program shall include the cost of providing funding
37 of all of the unfunded liability of a policemen's or firemen's pension plan; the costs of issuance of
38 pension funding revenue bonds issued to fund a pension funding program, the amount of any
39 debt service reserve and debt service contingency reserve funds funded from the proceeds of
40 pension funding revenue bonds; actuarial, financial advisory and legal expenses associated with
41 the pension funding program and the issuance of the pension funding revenue bonds; expenses
42 for estimates of cost and of revenues; expenses for actuarial studies; and such other expenses
43 as may be necessary or incidental to the financing authorized pursuant to this section, the pension
44 funding program and the performance of the actions required or permitted in connection with any
45 thereof.

46 (2) Actuarial studies must be performed by a contracted actuary of the Municipal Pension
47 Oversight Board as required by §8-22-20 of this code.

48 (d) Pension funding revenue bonds shall be in an amount at least equal to the applicable
49 policemen's and/or firemen's pension and relief funds then unfunded liability based upon the most
50 recent actuarial valuation reports prepared by an actuary contracted with or employed by the
51 oversight board as required by §8-22-20 of this code for the applicable funds with appropriate
52 adjustments for timing, experience and other factors. The pension funding revenue bonds shall
53 bear interest at not more than 12 percent per annum, payable semiannually, or at shorter intervals,
54 and the bonds allocable to a specific policemen's or firemen's pension and relief fund shall mature
55 over a period of time not exceeding the then estimated amortization period for the municipality's
56 unfunded actuarial accrued liability as set forth in the municipality's most recent actuarial valuation
57 reports prepared by an actuary contracted with or employed by the oversight board relating to the
58 applicable funds with appropriate adjustments for timing, experience and other factors, as may
59 be determined by the ordinance or ordinances authorizing the issuance of such bonds. The
60 annual principal and interest payments on pension funding revenue bonds shall, to the extent
61 possible, provide for level debt service and be proportionate to the funding requirements for the
62 applicable policemen's or firemen's pension and relief funds as shown on the municipality's most
63 recent actuarial valuation report for the policemen's or firemen's pension and relief funds prepared
64 by an actuary contracted with or employed by the oversight board with appropriate adjustments
65 for timing, experience and other factors, as applicable. The bonds may be made redeemable
66 before maturity, at the option of the commission issuing the bonds, to be exercised by the
67 commission, at not more than the par value thereof, and at a premium of not more than five
68 percent, under terms and conditions as may be fixed by the ordinance or ordinances authorizing
69 the issuance of the bonds. The principal and interest of the bonds may be made payable in any
70 lawful medium. The ordinance or ordinances shall determine the form of the bonds, shall set forth
71 any registration or conversion privileges, and shall fix the denomination or denominations of such

72 bonds, and the place or places of the payment of the principal and interest thereof, which may be
73 at any banking institution or trust company within or without the state and which is a vendor of the
74 state. All such bonds shall be, shall have and are hereby declared to have all the qualities and
75 incidents of negotiable instruments, under the Uniform Commercial Code of this state. The bonds
76 shall be executed in the manner the commission may direct. The bonds shall be sold by the
77 commission in a manner as may be determined to be in the best interest of the municipality which
78 created the commission. Any surplus of the bond proceeds over and above the cost of the pension
79 funding program shall be paid into the sinking fund established for the payment of such bonds.

80 (e) The bonds shall be secured by a trust indenture by and between the commission and
81 a corporate trustee, which may be a trust company or banking institution having powers of a trust
82 company within or without the state and which is a vendor of the state. The ordinance or
83 ordinances authorizing the issuance of the pension funding revenue bonds, and fixing the details
84 thereof, may provide that the trust indenture may contain provisions for protecting and enforcing
85 the rights and remedies of bondholders as may be reasonable and proper, including security
86 interests in any real property owned or leased by the commission regardless of whether such real
87 property is being improved with the proceeds of such indebtedness, not in violation of law. The
88 indenture may set forth the rights and remedies of the bondholders or the trustee, or both. The
89 commission may provide by ordinance or ordinances or in the trust indenture for the payment of
90 the proceeds of the sale of the bonds and the revenues received by the commission with respect
91 to the pension funding program to a depository, as the commission may determine for the custody
92 thereof, and for the method of distribution thereof, with such safeguards and restrictions as the
93 commission may determine. The trust indenture shall provide for a subaccount of the debt service
94 fund into which all premium tax allocations received by the trustee shall, upon receipt, be
95 deposited into for use solely in paying principal and interest on any outstanding pension funding
96 revenue bonds. All interest earnings on the subaccount shall be credited to the subaccount and

97 used solely for the payment of principal and interest on any outstanding pension funding revenue
98 bonds.

99 (f) Upon the payment in full of an issue of pension funding revenue bonds (other than with
100 the proceeds of refunding bonds) and any final costs related thereto, any amounts remaining in
101 any debt service reserve or contingency reserve funds shall be paid by the trustee of the bonds
102 to the municipality which formed the commission. Any excess moneys held in the subaccount of
103 the debt service fund into which premium tax allocations have been deposited shall be paid to the
104 Municipal Pension Oversight Board. Any other excess moneys held by the trustee at that time
105 shall be paid to the municipality.

106 (g) Notwithstanding any provision of this code to the contrary, if a municipality with a
107 policemen's or firemen's pension and relief fund is using the alternative method of funding
108 provided in §8-22-20(e) of this code, the municipality may only issue pension funding revenue
109 bonds if, on the date of the issuance of the bonds, the fund is closed to participation by police
110 officers or firefighters, as applicable, hired on or after the date of the issuance of the bonds.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor